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CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

CALIFORNIA SPORTFISHING PROTECTION
ALLIANCE, a non-profit corporation,

Case No.: 4:22-cv-05384-DMR

Plaintiff,

vs.

CASS, INC., a California corporation,

Defendant.

~~[PROPOSED]~~ CONSENT DECREE

~~[PROPOSED]~~ CONSENT DECREE

CONSENT DECREE

WHEREAS, California Sportfishing Protection Alliance (hereinafter “CSPA”) is a non-profit entity dedicated to protecting California surface waters from pollution and degradation, among other objectives.

WHEREAS, CASS, Inc. (“CASS” or “Defendant”) owns and operates an industrial facility at 2730 Peralta Street, Oakland, California, 94607 in Alameda County (“Facility”).

WHEREAS, the Facility processes aluminum, and non-ferrous and ferrous metals to be baled for off-site shipment or recycled on-site into aluminum ingots. The Facility is categorized under Standard Industrial Classification (“SIC”) Codes 5093 covering processing, reclaiming, wholesale distribution of scrap metal and waste materials and 3341, covering secondary smelting and refining of nonferrous metals

WHEREAS, stormwater discharges associated with industrial activity at the Facility are regulated by the National Pollutant Discharge Elimination System (“NPDES”) General Permit No. CAS000001 [State Water Resources Control Board], Water Quality Order No. 2014-57-DWQ as amended in 2015 and 2018 (“General Permit” or “Permit”), and the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.* (“Clean Water Act” or “CWA”), Sections 301(a) and 402, 33 U.S.C. §§ 1311(a), 1342;

WHEREAS, CSPA alleges that Defendant's operations at the Facility result in discharges of pollutants into waters of the United States and are regulated by the Clean Water Act Sections 301(a) and 402. 33 U.S.C. §§ 1311(a), 1342;

WHEREAS, the General Permit requires all permittees, including Defendant, to comply with, inter alia, the following mandates: (1) develop and implement a stormwater pollution prevention plan (“SWPPP”) and a stormwater monitoring implementation plan (“MIP”), (2) control pollutant discharges using, as applicable, best available technology economically achievable (“BAT”) or best conventional pollutant control technology (“BCT”) to prevent or reduce pollutants through the development and application of Best Management Practices (“BMPs”), which must be included and timely updated in the SWPPP, (3) reduce and eliminate discharges necessary to

1 comply with any and all applicable Water Quality Standards (“WQS”), and (5) implement a
2 monitoring and reporting program designed to assess compliance with the Permit;

3 **WHEREAS**, on March 4, 2022, Plaintiff issued a notice of intent to file suit (“60-Day
4 Notice”) to Defendant, the Administrator of the United States Environmental Protection Agency
5 (“EPA”), the Executive Director of the State Water Resources Control Board (“State Water
6 Board”), the Executive Officer of the San Francisco Bay Regional Water Quality Control Board
7 (“Regional Water Board”), and the Regional Administrator of EPA Region IX, alleging violations
8 of the Clean Water Act and the General Permit.

9 **WHEREAS**, on September 21, 2022, CSPA filed a complaint against CASS in the Northern
10 District of California, Civil Case No. 4:22-cv-05384-DMR (“Complaint”);

11 **WHEREAS**, Plaintiff’s Complaint alleged violations of the General Permit and CWA for
12 Defendant’s discharges of pollutants into storm drains and surface waters of the San Francisco Bay
13 Central (“Receiving Waters”);

14 **WHEREAS**, CASS denies all allegations set forth in the 60-Day Notice and Complaint;

15 **WHEREAS**, Plaintiff and Defendant (collectively “Settling Parties” or “Parties”) agree that
16 it is in their mutual interest to enter into a Consent Decree setting forth terms and conditions
17 appropriate to resolving the allegations set forth in the 60-Day Notice and Complaint without
18 further proceedings;

19 **WHEREAS**, the Settling Parties hereby consent to magistrate jurisdiction for all purposes;

20 **WHEREAS**, all actions taken by the Defendant pursuant to this Consent Decree shall be
21 made in compliance with all applicable federal, state and local rules and regulations.

22 **NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE SETTLING
23 PARTIES AND ORDERED AND DECREED BY THE COURT AS FOLLOWS:**

24 1. The Court has jurisdiction over the subject matter of this action pursuant to Section
25 505(a)(1)(A) of the CWA, 33 U.S.C. § 1365(a)(1)(A);

26 2. Venue is appropriate in the Northern District Court pursuant to Section 505(c)(1) of
27 the CWA, 33 U.S.C. § 1365(c)(1), because the Facility at which the alleged violations are taking
28 place is located within this District;

1 3. The Complaint states a claim upon which relief may be granted against Defendant
2 pursuant to Section 505 of the CWA, 33 U.S.C. § 1365 and the Summons and Complaint shall be
3 deemed served pursuant to Fed. R. Civ. P. 4;

4 4. CSPA has standing to bring this action;

5 5. The Court shall retain jurisdiction over this action for purposes of interpreting,
6 modifying or enforcing the terms of this Consent Decree, or as long thereafter as necessary for the
7 Court to resolve any motion to enforce this Consent Decree, but only regarding issue raised within
8 the three (3) year term of this Consent Decree.

9 **I. OBJECTIVES**

10 6. It is the express purpose of the Setting Parties through this Consent Decree to further
11 the objectives of the Clean Water Act, and to resolve all issues alleged by CSPA in its 60-Day
12 Notice and Complaint. These objectives include compliance with the provisions of this Consent
13 Decree, compliance with all terms and conditions of the General Permit, and compliance with all
14 applicable sections of the CWA.

15 7. In light of these objectives and as set forth fully below, Defendant agrees to comply
16 with the provisions of this Consent Decree, terms and conditions of the General Permit, and all
17 applicable sections of the CWA at the Facility.

18 **II. AGENCY REVIEW AND CONSENT DECREE TERM**

19 **A. AGENCY REVIEW OF CONSENT DECREE**

20 8. Agency Review. Plaintiff shall submit this Consent Decree to the United States
21 Department of Justice and the EPA (the “Federal Agencies”), within three (3) business days of the
22 final signature of the Parties, for agency review consistent with 40 C.F.R. § 135.5. The agency
23 review period expires forty-five (45) calendar days after receipt by the Federal Agencies, as
24 evidenced by certified return receipts, copies of which shall be provided to Defendant. In the event
25 that the Federal Agencies object to entry of this Consent Decree, the Parties agree to meet and
26 confer to attempt to resolve the issue(s) raised by the Federal Agencies.

1 9. Court Notice. Plaintiff shall notify the Court of the receipt date by the Federal
 2 Agencies, as required by 40 C.F.R. § 135.5, in order to coordinate the Court's calendar with the 45-
 3 day review period.

4 10. Entry of Consent Decree. Following expiration of the Federal Agencies' 45-day
 5 review period, Plaintiff shall submit the Consent Decree to the Court for entry.

6 **B. EFFECTIVE DATE AND TERM OF CONSENT DECREE**

7 11. Effective Date. The Effective Date of this Consent Decree shall be the date of entry
 8 by the Court.

9 12. Term & Termination. This Consent Decree shall terminate three (3) years from the
 10 Effective Date unless: 1) either the Facility satisfies the requirements of and receives an approval
 11 for a "Notice of Termination" ("NOT") as that term is defined in the General Permit, in which case
 12 the Consent Decree will terminate as to the Facility approved for NOT five (5) days after notice of
 13 the NOT approval is provided to CSPA, provided all monetary requirements owed under the
 14 Consent Decree are satisfied at that time; or 2) one of the Settling Parties has invoked Dispute
 15 Resolution in accordance with Section IV of this Consent Decree during the term of the Consent
 16 Decree, in which case the Consent Decree will terminate within the earlier of fifteen (15) days of
 17 notice by the Settling Parties that invoked Dispute Resolution that the dispute has been fully
 18 resolved or an order of the Court resolving the dispute and terminating the Consent Decree.

19 **III. COMMITMENTS OF THE SETTLING PARTIES**

20 **A. STORM WATER POLLUTION CONTROL BEST MANAGEMENT PRACTICES**

21 13. Current and Additional Best Management Practices. In addition to maintaining the
 22 current Best Management Practices ("BMPs") described in the Facility's Storm Water Pollution
 23 Prevention Plan ("SWPPP"), Defendant shall (1) develop and implement BMPs identified herein,
 24 and (2) develop and implement additional BMPs necessary to comply with the provisions of this
 25 Consent Decree and the Storm Water Permit, including but not limited to those that achieve the
 26 Best Available Technology Economically Achievable ("BAT") and the Best Conventional
 27 Treatment Technology ("BCT") as described in the General Permit. In addition, the Industrial
 28 General Permit Receiving Water Limitations require that industrial storm water discharges from the

1 Facility “not cause or contribute to an exceedance of any applicable water quality standards”
 2 contained in a Statewide Water Quality Control Plan or the applicable Regional Board’s Basin Plan.
 3 Defendant shall develop and implement BMPs necessary to comply with the Industrial General
 4 Permit requirement to achieve compliance with BAT/BCT standards, to comply with the applicable
 5 water quality standards, and to prevent or reduce contamination in storm water discharges from the
 6 Facility in compliance with this Consent Decree.

7 14. Structural and Non-Structural BMPs for the Facility. Within forty-five days of the
 8 Effective Date, Defendant shall develop and implement the following BMPs:

- 9 a. Additional Infrastructure Modifications to CASS’ Two Treatment Systems
 - 10 i. CASS shall install two (2) 6000-gallon tanks to the treatment system units, to
 11 provide additional treatment system optimization by providing treatment
 12 system flow equalization and settling. A 6000-gallon storage tank will be
 13 added to each treatment unit (one in the Main Yard and one in the New
 14 Yard). CASS shall modify its plumbing and make necessary site
 15 modifications to allow for this increased capacity.
 - 16 ii. CASS shall install oil/water separator skimmer socks in the oil/water
 17 separators at both the Main Yard and the New Yard. This will provide
 18 additional capacity to capture oil and grease prior to the treatment system.
 19 The skimmer socks will work in conjunction with the drop-in filters and spill
 20 socks installed in and around the catch basins upstream of the oil/water
 21 separators.
 - 22 iii. CASS shall install an oil shroud or equivalent shroud shall be fabricated and
 23 installed on the Aquip inlet at both the Main Yard and the New Yard. This
 24 will help capture and trap oil and grease and further reduce sediment in storm
 25 water entering the Aquip unit. The oil shrouds shall be inspected prior to and
 26 following storm events and changed, as necessary.

- b. Additional Maintenance to CASS' Two Treatment Systems
 - i. CASS will increase the cleanout of the oil/water separators at both the Main Yard and New Yard to twice per year.
 - ii. The holding tanks at both the Main Yard and New Yard will be cleaned out annually by specialists.
 - iii. CASS shall paint the catch basin in the New Yard.
- c. CASS shall place Filtrexx Targeted Socks Containing the EnviroSoxx Industrial Blend that specifically targets metals. The Filtrexx socks shall be placed in a multiphase filtration design upstream and around catch basins prior to a forecast rain event of 50% or greater of 0.1 inches¹ at or near the Facility.
- d. Non-Structural BMPs and Enhanced Housekeeping
 - i. CASS shall observe the customer cleaning area within the facility boundary at the Public Work Area prior to a forecast rain event of 50% or greater of 0.1 inches and will conduct additional sweeping based on its observation during hours of operation.
 - ii. CASS shall implement a protocol that the facility keep the two doors along Poplar Street at the Furnace/Gardener Yard closed except when entering and leaving.
 - iii. CASS shall conduct a formal pre-rain protocol inspection on weekdays during hours of operation prior to a forecast storm event of 50% or greater of 0.1 inches.
 - iv. CASS shall use three SW8000 sweepers twice per shift. The three sweepers have HEPA filters, hoses, and misting capabilities.
 - v. In areas inaccessible to the sweepers, CASS shall hand sweep or manual vacuum twice per shift.

¹ CASS will refer to www.wunderground.com prior to rain events to determine if the forecast is 50% or greater of 0.1 inches of rain for each applicable enhanced housekeeping requirement above in paragraph 14.d.

- vi. CASS shall inspect hazardous material and waste storage areas daily for proper implementation and maintenance of control measures and containment integrity.
- vii. CASS shall train employees on appropriate hazardous materials use and hazardous waste control and disposal procedures at the initial time of employment and then at least annually.
- viii. CASS shall perform maintenance activities/work only in designated work areas.
- ix. When emergency maintenance activities must be performed outdoors, absorbent or spill trays should be laid down or readily available before any operational activity. Care shall be taken to immediately contain, capture and clean up any discharge or spill of waste auto fluids to the ground.
- x. CASS shall maintain spill clean-up supplies at all fluid storage, hydraulic press, and maintenance areas.
- xi. CASS shall not leave drip pans or open waste containers unattended. Transfer wastes to proper containers as soon as practical, but at the minimum at the end of the workday.
- xii. CASS shall inspect operation work areas daily to ensure adequate implementation and maintenance of operational procedures and control measures.
- xiii. CASS shall train all staff on proper operating procedures and control measures at the time of initial arrival at the Facility and then at least annually.

B. SAMPLING AT THE FACILITY

24 15. CASS shall develop a monitoring program consistent with the General Permit.
25 During the term of this Consent Decree, Defendant shall collect storm water samples from each
26 Discharge Location as identified in its then-current SWPPP from at least four (4) Qualifying Storm
27 Events (“QSEs”) as required by the General Permit (i.e., two QSE during the first half of the
28 Reporting Year and two QSEs during the second half of the Reporting Year). A Qualifying Storm

1 Event is a precipitation event that produces a discharge from at least one (1) drainage area and is
 2 preceded by forty-eight (48) hours with no discharge from any drainage area. Any failure to collect
 3 samples as required by this Consent Decree shall be documented and submitted to CSPA by email
 4 within five (5) days of the date a sample should have been collected but was not. If, prior to
 5 February 1 of a Reporting Year, CASS has collected samples from two (2) or fewer QSEs, CASS
 6 shall, to the extent feasible, collect samples during as many QSEs as necessary until a minimum of
 7 4 QSEs have been sampled for the Reporting Year. No two (2) samples may be from the same
 8 storm event.

9 16. Sampling Parameters. All samples collected pursuant to this Consent Decree shall
 10 be analyzed for the parameters listed in Table 1.

11 17. Laboratory and Holding Time. Except for pH samples, delivery of all samples to a
 12 California state certified environmental laboratory for analysis within allowable hold times,
 13 pursuant to 40 C.F.R. Part 136.

14 18. Detection Limit. Defendant shall request that the laboratory use analytical methods
 15 adequate to detect the individual contaminants at or below the values specified in the General
 16 Permit and Table 1 below.

17 19. Reporting. Defendant shall provide complete laboratory results of all samples
 18 collected at the Facility to CSPA within fourteen (14) days of receiving the results.

19 **C. REDUCTION OF POLLUTANTS IN DISCHARGES**

20 20. Table 1 Numeric Limits: Defendant shall develop and implement BMPs to reduce
 21 pollutants in storm water at the Facility to levels below those in Table 1. Table 1 Exceedances are
 22 defined as follows: beginning with the 2022-2023 Reporting Year, in any Reporting Year under the
 23 term of this Consent Decree an Action Plan shall be required if 1) the annual average (Annual NAL)
 24 of all storm water analytical results for individual pollutant(s) exceeds any of the applicable limits
 25 as set forth in Table 1; or 2) any two storm water discharge samples contain a single pollutant at a
 26 concentration that exceeds an Instantaneous NAL as set forth in Table 2 of the Permit (i.e., for TSS,
 27 O&G and pH). In any Reporting Year during which Defendant receives a final laboratory report(s)
 28 of sampling completed under paragraph 15 of this Agreement that demonstrates an Exceedance of

1 Table 1, as defined above, Defendant shall prepare and submit to CSPA a plan for reducing and/or
 2 eliminating the discharge of pollutants for the Facility (“Action Plan”). Each Action Plan shall be
 3 submitted to CSPA no later than forty-five days (45) days after the Facility receives the laboratory
 4 report(s) for the fourth, or final if there is not a fourth due to lack of QSEs, storm water sample in
 5 the Reporting Year, which shall be the last sample taken on or before June 30 of the Reporting
 6 Year. Any required Action Plan must be sent by July 31 following any Reporting Year. In no event
 7 shall more than one Action Plan be required per Reporting Year. Each Action Plan must address
 8 each Exceedance of a Table 1 analyte separately.

9 TABLE 1

10 Analytes	11 Values	12 Source of Limit
13 Total Suspended Solids	100 mg/L	Annual NAL
	400 mg/L	Instantaneous NAL
14 Oil & Grease	15 mg/L	Annual NAL
	25 mg/L	Instantaneous NAL
15 Chemical Oxygen Demand	120 mg/L	Annual NAL
16 Zinc	0.26 mg/L	Annual NAL
17 Copper	0.0332 mg/L	Annual NAL
Lead	0.262 mg/L	Annual NAL
Iron	1 mg/L	Annual NAL
Aluminum	0.75 mg/L	Annual NAL
pH	6.0-9.0 s.u.	Instantaneous NAL

18 21. Action Plan Requirements. Each Action Plan submitted shall include at a minimum:
 19 (1) the identification of the contaminant(s) discharged in excess of the numeric
 20 limit(s); (2) an assessment of the source of each contaminant exceedance; (3) the
 21 identification of additional BMPs and/or modified BMPs that shall be implemented
 22 to improve the storm water management practices to prevent future exceedances and
 23 help achieve compliance with the numeric limit(s); and (4) time schedules for
 24 implementation of the proposed BMPs. The time schedule(s) for implementation
 25 shall ensure that all BMPs are implemented as soon as possible, but in no case later
 26 than October 1 of the upcoming Reporting Year. Defendant shall notify CSPA in
 27 writing when an Action Plan has been implemented.

1 a. Action Plan After the 2023-2024 Reporting Year. If an Action Plan is required
 2 after the 2023-2024 Reporting Year, Defendant shall evaluate, based on all storm
 3 water sample results, observations, and performance of the existing storm water
 4 treatment systems with the upgrades required in paragraph 14 of this Consent
 5 Decree, whether to install a polishing treatment component to the existing storm
 6 water treatment systems. The Defendant shall provide its findings in writing
 7 setting forth the type of polishing component chosen or any other alternative
 8 proposal to the existing stormwater system based on all storm water sample
 9 results and observations. Any disputes as to the adequacy of an Action Plan shall
 10 be resolved pursuant to the dispute resolution provisions of this Consent Decree,
 11 set out in Section IV Below.

12 b. Action Plan Review. CSPA shall have twenty (20) days upon receipt of
 13 Defendant's Action Plan to provide Defendant with comments. Within thirty (30)
 14 days of receiving CSPA's proposed revisions to an Action Plan, Defendant shall
 15 consider each of CSPA's recommended revisions and accept them or justify in
 16 writing why any comment is not incorporated. Action Plan(s) developed and
 17 implemented pursuant to this Consent Decree are an obligation of this Consent
 18 Decree. Any disputes as to the adequacy of an Action Plan shall be resolved
 19 pursuant to the dispute resolution provisions of this Consent Decree, set out in
 20 Section IV below.

21 **D. VISUAL OBSERVATIONS**

22 22. Storm Water Discharge Observations. During the term of this Consent Decree,
 23 Defendant shall conduct sampling event visual observations during the Facility's operating hours
 24 during QSEs from the Facility per General Permit section XI.A.2, and visual observations on
 25 weekdays of all QSEs from the Facility during operating hours.

26 23. Non-Storm Water Discharge Observations. During the term of this Consent Decree,
 27 Defendant shall conduct monthly non-storm water visual observations at each discharge location.

1 24. Visual Observations Records. Defendant shall maintain observation records to
 2 document compliance with paragraphs 22 and 23 and shall provide CSPA with a copy of those
 3 records within fourteen (14) days of receipt of a written request from CSPA for those records.

4 25. Employee Training Program. Within forty-five days of the Effective Date, Defendant
 5 shall develop and implement an employee training program that meets the following requirements
 6 and ensures (1) that there is a sufficient number of employees at the Facility designated to achieve
 7 compliance with the General Permit and this Consent Decree (“Designated Employees”), and (2)
 8 that these Designated Employees are properly trained to perform the activities required by the
 9 General Permit and this Consent Decree (“Training Program”):

- 10 a. Language. The training and training materials shall be available and offered in the
 11 language(s) in which relevant employees are fluent. If necessary, Defendant shall
 12 provide a translator or translators at all trainings where such translation is likely to
 13 improve staff comprehension of the Training Program and improve compliance with
 14 this Consent Decree and the General Permit.
- 15 b. Training shall be provided by a Qualified Industrial Storm Water Practitioner
 16 (“QISP”, as defined in Section IX.A of the General Permit) familiar with the
 17 requirements of this Consent Decree and the General Permit, and shall be repeated as
 18 necessary to ensure that all relevant employees are familiar with the requirements of
 19 this Consent Decree, the General Permit, and the Facility’s SWPPP. All relevant new
 20 staff shall receive this training before assuming responsibilities for implementing the
 21 SWPPP.
- 22 c. Sampling Training. Defendant shall designate an adequate number of employees
 23 necessary to collect storm water samples as required by this Consent Decree,
 24 including training to ensure samples are properly collected, stored, and submitted to
 25 a certified laboratory.
- 26 d. Visual Observation Training. Defendant shall provide training on how and when to
 27 properly conduct visual observations to Designated Employees.
- 28 e. Non-Storm Water Discharge Training. Defendant shall train all Designated
 Employees at the Facility on the General Permit’s prohibition of non-storm water

1 discharges, so that Designated Employees know what non-storm water discharges
 2 are and how to detect and prevent non-storm water discharges.

3 f. Employees. All Designated Employees at the Facility shall participate in the
 4 Training Program annually. New Designated Employees shall participate in the
 5 Training Program within thirty (30) days of their hiring date.

6 g. The Defendant shall maintain training records to document compliance with this
 7 paragraph and shall provide CSPA with a copy of these records within fourteen (14)
 8 days of receipt of a written request.

9 h. Identification of Storm Water Pollution Prevention Team and Training Program
 10 Updates into SWPPP. Within thirty (30) days of the Effective Date, Defendant shall
 11 update the SWPPP to identify the positions responsible for carrying out storm water
 12 management, monitoring, sampling and SWPPP implementation.

13 26. SWPPP and Monitoring Implementation Plan (“MIP”) Revisions and Update. Within
 14 thirty (30) days of the Effective Date, Defendant shall amend the Facility’s SWPPP and MIP to
 15 incorporate the requirements in this Consent Decree. Defendant agrees to submit the updated
 16 SWPPP and MIP to CSPA upon completion for review and comment.

17 a. Review of SWPPP and/or MIP. CSPA shall have thirty (30) days from receipt of the
 18 amended SWPPP and/or MIP to propose any changes. Within thirty (30) days of
 19 receiving CSPA’s comments and proposed changes to the SWPPP, Defendant shall
 20 consider each of the comments and proposed changes and either accept them or
 21 justify in writing why a change is not incorporated;

22 b. Defendant shall revise the SWPPP and MIP if there are any significant changes in
 23 the Facility’s operations, including but not limited to changes in storm water
 24 discharge points or BMPs within thirty (30) days of the changes, which will be
 25 subject to CSPA’s review and comment as provided in paragraph 26 (a) above.

26 c. The Parties agree to work in good faith to resolve any disputes with respect to the
 27 SWPPP or MIP, and any remaining disputes will be resolved through timely
 28 initiation of the dispute resolution procedures in Section IV below.

E. COMPLIANCE MONITORING AND REPORTING

27. Every year during the term of this Consent Decree, CSPA may conduct one annual site inspection (“Site Inspection”) for the purpose of ensuring compliance with this Consent Decree and the General Permit. In the event of a dispute regarding Defendant’s compliance with this Consent Decree, and provided a Site Inspection would be relevant to resolving the Parties’ dispute, the Parties agree to meet and confer regarding one additional Site Inspection for the term of the Consent Decree at Plaintiff’s request. Plaintiff shall not unreasonably request, and Defendant shall not unreasonably deny, one additional Site Inspection. Any Site Inspection shall occur Monday through Friday, excluding Federal and religious holidays, between 9:00 a.m. and 4:00 p.m. CSPA will provide Defendant with as much notice as possible—but at least forty-eight (48) hours’ notice prior to a Site Inspection in anticipation of wet weather, and seventy-two (72) hours’ notice during dry weather. For any Site Inspection requested to occur in wet weather, Plaintiff shall be entitled to adjust timing or reschedule during normal business hours in the event the forecast changes and anticipated precipitation appears unlikely, and thus frustrates the purpose of visiting the Facility in wet weather. Notice will be provided by telephone and electronic mail to the individual(s) designated below at paragraph 54. During the Wet Weather inspection, Plaintiff may request that Defendant collect a sample of industrial storm water discharge from the Facility’s designated industrial discharge point(s) referenced in its then- current SWPPP, to the extent that such discharges are occurring. Defendant shall collect the sample and provide a split sample to CSPA. CSPA’s representative(s) may observe the split sample(s) being collected by Defendant’s representative. Prior to the Site Inspection, CSPA’s representative(s) shall sign the Site Visit Agreement attached as Exhibit A to this Consent Decree. CSPA shall be permitted to take photographs or video recording during any Site Inspection pursuant to the terms in the Site Visit Agreement. CSPA will limit inspection participants to three individuals, all of whom agree to execute the attached Assumption of Risk, Release, and Indemnity Agreement (included as an attachment to Exhibit A) prior to entering the Facility.

28. Document Provision. During the term of this Consent Decree, Defendant shall notify and submit documents to CSPA as follows:

- 1 a. Defendant shall copy CSPA on all compliance documents, monitoring and/or
2 sampling data, written communications and/or correspondences, or any documents
3 related to compliance with the General Permit and/or this Consent Decree at the
4 Facility that are submitted to the Regional Board, the State Board, and/or any state or
5 local agency, county or municipality.
- 6 b. Any compliance document, inspection report, written communication and/or
7 correspondence, or any document related to compliance with the General Permit
8 and/or this Consent Decree at the Facility received by Defendant from the Regional
9 Board, the State Board, and/or any state or local agency, county, municipality shall
10 be sent to CSPA within three (3) business days of receipt by Defendant. Defendant
11 shall mail paper copies or email electronic copies of documents to CSPA at the
relevant notice address contained below.

12 29. Compliance Monitoring. To partially defray costs associated with Plaintiff's
13 monitoring of Defendant's compliance with this Consent Decree, Defendant agrees to pay Nine
14 Thousand dollars (\$9,000.00) within thirty (30) days of the Effective Date payable to: Aqua Terra
15 Aeris Law Group LLP, Attn: Anthony M. Barnes and delivered by overnight carrier to Aqua Terra
16 Aeris Law Group, 4030 Martin Luther King Jr. Way, Oakland, CA 94609.

17 30. Failure to submit payment as required under this paragraph will constitute breach of
18 the Consent Decree.

19 **F. ENVIRONMENTAL MITIGATION, LITIGATION FEES AND COSTS, STIPULATED
20 PENALTIES, AND INTEREST**

21 31. Environmental Mitigation Project. To fund environmental project activities that will
22 reduce or mitigate the impacts of storm water pollution from industrial activities occurring in
23 watersheds adjacent to the San Francisco Bay, Defendant agrees to make a total payment of
24 Twenty-Eight Thousand Dollars (\$28,000.00) to the Rose Foundation made within sixty (60) days
25 of the Effective Date, payable to the Rose Foundation for Communities and the Environment and
26 sent via overnight mail to Rose Foundation, 201 4th St APT 102, Oakland, CA 94607. Defendant
shall provide CSPA with a copy of such payment.

27 32. CSPA's Fees and Costs. To partially reimburse Plaintiff for its investigation fees and
28 costs, expert/consultant fees and costs, reasonable attorneys' fees, and other costs incurred as a

1 result of investigating and filing the lawsuit, and negotiating a resolution of this matter, Defendant
 2 agrees to pay a total of Forty-Eight Thousand (\$48,000.00) to CSPA within thirty (30) days of the
 3 Effective Date, made payable to: Aqua Terra Aeris Law Group LLP, Attn: Anthony M. Barnes
 4 and delivered by overnight carrier to Aqua Terra Aeris Law Group, 4030 Martin Luther King Jr.
 5 Way, Oakland, CA 94609.

6 **IV. DISPUTE RESOLUTION**

7 33. This Court shall retain jurisdiction over this matter for the term of this Consent
 8 Decree for the purposes of enforcing its terms and conditions, and adjudicating all disputes among
 9 the Parties that may arise under the provisions of this Consent Decree. The Court shall have the
 10 power to enforce this Consent Decree with all available legal and equitable remedies, including
 11 contempt.

12 34. Meet and Confer. Either party to this Consent Decree may invoke the dispute
 13 resolution procedures of this Section IV by notifying the other party in writing of the matter(s) in
 14 dispute and of the disputing party's proposal for resolution. The Parties shall then meet and confer
 15 in good faith (either telephonically or in person) within fourteen (14) days of the date of the notice
 16 in an attempt to fully resolve the dispute.

17 35. Settlement Conference. If the Parties cannot resolve the dispute within thirty (30)
 18 days of the meet and confer described in paragraph 34, the Parties agree that the dispute may be
 19 submitted for formal resolution by filing a motion before the United States District Court for the
 20 Northern District of California. The Parties agree to request an expedited hearing schedule on the
 motion.

21 36. In resolving any dispute arising from this Consent Decree before the Court, the
 22 Parties shall be entitled to seek fees and costs incurred pursuant to the provisions set forth in
 23 Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), applicable case law interpreting such
 24 provisions, or as otherwise provided for by statute and/or case law.

25 **V. MUTUAL RELEASE OF LIABILITY AND COVENANT NOT TO SUE**

26 37. Plaintiff's Waiver and Release of Defendant. In consideration of the above, upon the
 27 Effective Date of this Consent Decree, Plaintiff, on its own behalf and on behalf of its officers and
 28 directors, release Defendant, its officers, directors, managers, employees, members, parents,

1 subsidiaries, divisions, affiliates, successors or assigns, agents, property owners (including all
 2 trusts, trustees, and beneficiaries), attorneys and other representatives, from and waives all claims
 3 that were or could have been raised based on the 60-Day Notice and/or the Complaint up to and
 4 including the Termination Date of this Consent Decree.

5 38. Defendant's Waiver and Release of Plaintiff. In consideration of the above, upon the
 6 Effective Date of this Consent Decree, Defendant, on its own behalf and on behalf of its officers,
 7 directors, employees, parents, subsidiaries, affiliates and each of their successors or assigns,
 8 release Plaintiff, its officers, directors, managers, employees, members, attorneys and other
 9 representatives from and waives all claims related to the 60-Day Notice and/or the Complaint up
 10 to and including the Termination Date of this Consent Decree.

11 39. Nothing in this Consent Decree limits or otherwise affects Plaintiff's rights to
 12 address or take any position that it deems necessary or appropriate in an informal or formal
 13 proceeding before the State Water Board, Regional Water Board, EPA, or any other judicial or
 14 administrative body on any matter relating to Defendant's compliance at the Facility with the
 15 General Permit or the Clean Water Act occurring or arising after the Effective Date.

16 VI. MISCELLANEOUS PROVISIONS

17 40. No Admission of Liability. The Parties enter into this Consent Decree for the
 18 purpose of avoiding prolonged and costly litigation. Neither the Consent Decree nor any payment
 19 pursuant to the Consent Decree shall constitute or be construed as a finding, adjudication, or
 20 acknowledgement of any fact, law or liability, nor shall it be construed as an admission of
 21 violation of any law, rule, or regulation. The Defendant maintains and reserves all defenses it may
 22 have to any alleged violations that may be raised in the future.

23 41. Counterparts. This Consent Decree may be executed in any number of counterparts,
 24 all of which together shall constitute one original document. Telecopy, electronic mail, and/or
 25 facsimile copies of an original signature shall be deemed to be originally executed counterparts of
 26 this Consent Decree.

27 42. Authority. The undersigned representatives for Plaintiff and Defendant each certify
 28 that s/he is fully authorized by the party whom s/he represents to enter into this Consent Decree. A

1 Party's signature to this Consent Decree transmitted by facsimile or electronic mail shall be
2 deemed binding.

3 43. Construction. The language in all parts of this Consent Decree shall be construed
4 according to its plain and ordinary meaning, except as to those terms defined in the General
5 Permit, the Clean Water Act, or specifically herein. The captions and paragraph headings used in
6 this Consent Decree are for reference only and shall not affect the construction of this Consent
7 Decree.

8 44. Full Settlement. This Consent Decree constitutes a full and final settlement of this
9 matter.

10 45. Integration Clause. This is an integrated Consent Decree. This Consent Decree is
11 intended to be a full and complete statement of the terms of the agreement between the Parties and
12 expressly supersedes any and all prior oral or written agreements, covenants, representations, and
13 warranties (express or implied) concerning the subject matter of this Consent Decree.

14 46. Severability. In the event that any provision, paragraph, section, or sentence of this
15 Consent Decree is held by a court to be unenforceable, the validity of the enforceable provisions
16 shall not be adversely affected.

17 47. Choice of Law. The laws of the United States shall govern this Consent Decree.

18 48. Diligence. Defendant shall diligently file and pursue all required permit applications
19 for the structural BMPs and shall diligently procure contractors, labor, and materials needed to
20 complete all BMPs by the required deadlines.

21 49. Effect of Consent Decree. Compliance with this Consent Decree does not mean that
22 Defendant is complying with the General Permit, the Clean Water Act, or any other law, rule, or
23 regulation.

24 50. Negotiated Settlement. The Settling Parties have negotiated this Consent Decree, and
25 agree that it shall not be construed against the party preparing it, but shall be construed as if the
26 Settling Parties jointly prepared this Consent Decree, and any uncertainty and ambiguity shall not
27 be interpreted against any one party.

28 51. Modification of the Consent Decree. This Consent Decree, and any provisions
herein, may not be changed, waived, discharged, or terminated unless by a written instrument,

1 signed by the Parties. In the event that there is a dispute regarding a change, waiver, discharge or
 2 termination of any provision(s), either Party may seek resolution from the court.

3 52. Assignment. Subject only to the express restrictions contained in this Consent
 4 Decree, all of the rights, duties and obligations contained in this Consent Decree shall inure to the
 5 benefit of and be binding upon the Parties, and their successors and assigns. Defendant shall notify
 6 Plaintiff within ten (10) days of any assignment.

7 53. Force Majeure. Neither of the Parties shall be considered to be in default in the
 8 performance of any of their respective obligations under this Consent Decree when performance
 9 becomes impossible due to a Force Majeure event. A Force Majeure event is any circumstance
 10 beyond a Settling Party's control, including without limitation, any act of God, war, fire,
 11 earthquake, flood, windstorm, or natural catastrophe; criminal acts; civil disturbance, vandalism,
 12 sabotage, or terrorism; restraint by court order or public authority or agency; or action or non-
 13 action by, or inability to obtain the necessary authorizations or approvals from any governmental
 14 agency; government orders or restrictions related to COVID-19 or comparable public health
 15 threats. A Force Majeure event shall not include normal inclement weather, economic hardship,
 16 inability to pay, or employee negligence. Any party seeking to rely upon this paragraph to excuse
 17 or postpone performance shall have the burden of establishing that it could not reasonably have
 18 been expected to avoid the Force Majeure event and which by exercise of due diligence has been
 19 unable to overcome the failure of performance. The Parties shall exercise due diligence to resolve
 and remove any Force Majeure event.

20 54. Correspondence. All notices required herein or any other correspondence pertaining
 21 to this Consent Decree shall be, the extent feasible, sent via electronic mail transmission to the e-
 22 mail address listed below, or if electronic mail is not feasible, then by certified U.S. mail with
 23 return receipt, or by hand delivery to the following addresses:

24 If to Plaintiff:

25 Anthony M. Barnes
 26 Aqua Terra Aeris Law Group LLP
 27 4030 Martin Luther King Jr. Way
 28 Oakland, CA 94609
 amb@atalawgroup.com
 (917) 371-8293

24 If to Defendant:

25 Ruben A. Castellón
 26 RAF Law Group
 27 811 Wilshire Blvd., Suite 1050
 28 Los Angeles, CA 90017
 rcastellon@raflawgroup.com
 (213) 623-7515

1 With copies to:
2 Chris Shutes, Acting Executive Director
3 California Sportfishing Protection Alliance
3 3536 Rainier Ave,
3 Stockton, CA 95204
4 blancapaloma@msn.com
4 (510) 421-2405
5

With copies to:
Edward B. Kangeter IV
Chief Executive Officer
CASS, Inc.
2730 Peralta Street
Oakland, CA 94607
Edward@customalloy.com
(510) 893-6476

6 Notifications of communications shall be deemed submitted three (3) days after the date that they
7 are postmarked and sent by first-class mail, or immediately after acknowledgement of receipt via
8 email by the receiving party. Any change of address or addresses shall be communicated in the
9 manner described above for giving notices.

10 55. If for any reason the DOJ or the District Court should decline to approve this
11 Consent Decree in the form presented, the Parties shall use their best efforts to work together to
12 modify the Consent Decree within thirty (30) days so that it is acceptable to the DOJ or the
13 District Court. If the Parties are unable to modify this Consent Decree in a mutually acceptable
14 manner that is also acceptable to the DOJ or the District Court, this Consent Decree shall
15 immediately be null and void as well as inadmissible as a settlement communication under Federal
16 Rule of Evidence 408 and California Evidence Code section 1152.

17 The Parties hereto enter into this Consent Decree and submit it to the Court for its approval
18 and entry as a final judgment.

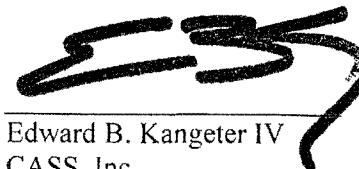
19 IN WITNESS WHEREOF, the undersigned have executed this Consent Decree as of the date
20 set forth below.

21 APPROVED AS TO CONTENT

22 Dated: September 23, 2022

23 By: 
24 Chris Shutes, Acting Executive Director
25 California Sportfishing Protection Alliance

26 Dated: Sept 28, 2022

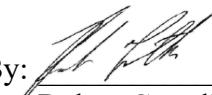
27 By: 
28 Edward B. Kangeter IV
CASS, Inc.

1 APPROVED AS TO FORM
2

3 Dated: September 22, 2022

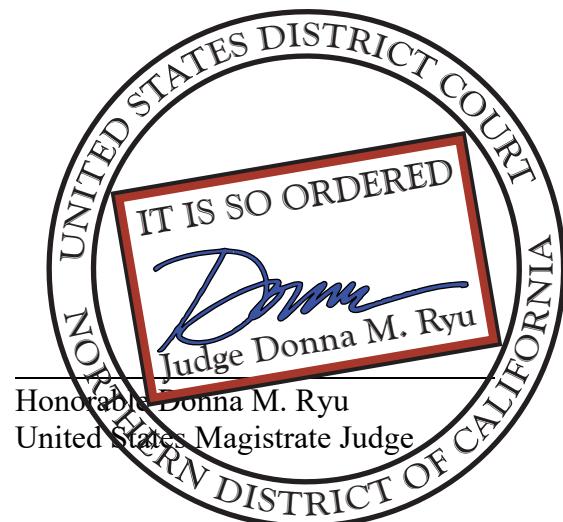
4 By: 
5 Anthony M. Barnes
6 Attorney for Plaintiff
7 California Sportfishing Protection Alliance

8 Dated: September 28, 2022

9 By: 
10 Ruben Castellón
11 Attorney for Defendant
12 CASS, Inc.

13 IT IS SO ORDERED.

14 Dated: Nov. 28, 2022



15
16 Honorable Donna M. Ryu
17 United States Magistrate Judge
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EXHIBIT A

Exhibit A

Site Visit Agreement

This Agreement is made by and between Plaintiff California Sportfishing Protection Association (“CSPA”) and Defendant CASS, Inc. (“CASS”) on the one hand, and each of their respective principals, owners, officers, agents, employees, consultants, attorneys, of counsel, assigns, heirs, beneficiaries, and representatives from, or any other related person or entity, (all parties collectively referred to as the “Parties”). With that understanding, the Parties agree to the following:

CASS will make its site at 2730 Peralta Street located in Oakland, California available for a site visit beginning at ____ on _____ at ___ and shall be concluded within a reasonable period of time and shall last no more than 2 hours;

Aqua Terra Aeris Law Group (“Aqua Terra Aeris”) will notify CASS of the names of each individual who intend to attend the site inspection at least 24 hours in advance of the visit;

No more than one CSPA consultant or a previously agreed upon number of CSPA consultants will attend the site visit;

All of CSPA’s representatives and consultants agree to properly identify themselves upon arrival, to comply with all applicable safety and security regulations and protocols while at the site and agree to the Assumption of Risk, Release, and Indemnity Agreement that is attached hereto as **Attachment 1**;

CSPA’s representatives and consultants will be accompanied at all times during the site visit by designated CASS representatives and/or its attorneys, and CSPA’s representatives shall not engage in communications with CASS employees or its customers without the express permission from those CASS representatives participating in the site visit;

CSPA’s consultant, alone, will be permitted to take photographs of the areas related to stormwater discharge issues of the site during the inspection. CSPA agrees to seek authorization and approval from CASS prior to taking photographs of any machinery and/or equipment related to manufacturing and/or processing. If CASS determines that the photographs may reveal sensitive, confidential, proprietary and/or protected information, or is not reasonably related to the stormwater discharge issues that are the subject of the site visit, CSPA’s consultant shall not take the photograph. CSPA agrees that it will not take any photographs of CASS customers’ items that are at the site for processing. CASS agrees to help re-frame requests to restrict the photographs taken by CSPA’s consultant to exclude sensitive, confidential, proprietary and/or protected information of CASS and/or its customers. CASS agrees not to unreasonably restrict CSPA’s consultant from taking photographs, and where possible, to request a photo be re-framed rather than avoided;

Before leaving the site, CASS will review all of the electronic versions of the photos taken and may, after consultation with CSPA and/or its consultant, delete any photos that fail to conform to the principles described above;

A duplicate set of all photographs taken at the site or its surroundings will be provided to CASS and its attorneys no later than seven (7) days after the inspection;

After CASS receives the duplicate set of photographs, CASS has fourteen (14) days to decide whether the photographs taken reveal proprietary/confidential information or comprise CASS's trade secrets. If CASS believes that any of the photos reveal proprietary/confidential information, comprise CASS's trade secrets, or violate CASS's obligations to protect the proprietary interests of its customers, CASS shall notify CSPA in writing, including any rationale or justification within the fourteen day period and CSPA shall edit or delete the photos that CASS has identified;

All photographs taken will be held confidential and be used for settlement purposes only, and shall not be admissible for any purpose in the litigation;

Any photographs taken during this site inspection will be destroyed or returned within 5 business days of resolution of this matter and all electronic copies of such photographs shall be confirmed under oath to have been properly deleted and that no copies electronic or otherwise are retained;

Any CSPA consultant, or expert who reviews any of the photographs, notes, correspondence or impressions from this site visit shall be required to review this Agreement and sign the amendment attached hereto as Attachment 2 agreeing to abide by the terms of this Agreement;

The failure to observe any of the terms in this Agreement shall be considered material and prejudicial to the affected Party, and such Party may seek an appropriate remedy from the Court including but not limited to excluding evidence from trial or obtaining a special instruction for the trier of fact to consider in its deliberations; and

CSPA reserves all of its rights to discovery as provided by the Code, including the right to full, formally-noticed site inspections during which CSPA may document conditions at the site with photographs.

THE UNDERSIGNED, HEREBY CERTIFY that they have read this entire Agreement, and have had the terms used herein and consequences hereof explained by an attorney. The undersigned fully understand the terms and consequences.

Aqua Terra Aeris Law Group (Aqua Terra Aeris)

DATED: _____ By: _____

Its _____

CASS Inc. (CASS)

DATED: _____ By: _____

Its _____

Attachment 1

ASSUMPTION OF RISK, RELEASE, AND INDEMNITY AGREEMENT

I understand that I am being given temporary entry to the following property (the “Site”):

2730 Peralta Street located in Oakland, California

In consideration of the forgoing, I agree to the following:

I acknowledge and agree that my entry onto the Site is entirely voluntary and at my own risk. Except for the intentional or negligent acts or omissions of Indemnified Parties, I agree to indemnify, defend, hold harmless and release CASS, Inc., its shareholders, officers, directors, employees, agents, attorneys, successors, assigns, lenders, landlords, trustees, beneficiaries, and any other person(s) related to the Site or the activity at the Site (collectively “Indemnified Parties”) from any and all demands, lawsuits, damages, claims, settlements, judgments, losses, liability, or expenses (including interest, attorney fees, and expert witness fees) for personal injury, illness (including without limitation potential exposure to COVID-19), death, or property damage, caused by, arising from or related to my entry onto the Site.

I confirm that at the time of the site inspection that I do not have any communicable disease or symptoms of a communicable disease, including without limitation COVID-19 symptoms as outlined in current Centers for Disease Control guidance including: fever or chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, and/or diarrhea. I agree that if I have any of these symptoms at the time of the site inspection that I will not be allowed to participate in the site inspection and the site inspection will be cancelled.

I agree that I will wear personal protective equipment at the site inspection, including, but not limited to, the following: protective eye gear (goggles or glasses), face covering (covering both nose and mouth), and closed toe shoes (steel toe shoes). I also agree to maintain at least six feet social distance from all employees and representatives, including attorneys and experts.

I agree that I will not assign my rights or delegate my obligations under this Agreement and that there are no third-party beneficiaries.

I HAVE READ THIS DOCUMENT AND FULLY UNDERSTAND AND AGREE TO EACH AND EVERY PROVISION.

Signature: _____

Company: _____

Name: _____

Title: _____

Purpose of Visit: _____

Attachment 2

**Agreement of California Sportfishing Protection Association's (CSPA)
Representative**

I, _____, am _____ and have read, understand, and agree to comply with, and be bound by, all of the terms and conditions contained in the attached Site Visit Agreement entered into between CSPA and CASS, Inc. (CASS).

By: _____

Title: _____

Signature: _____

Date: _____